

## FIFTH DAY

(Wednesday, September 20, 1933)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Stevenson.

The roll was called, and the following Members were present:

Mr. Speaker.	Holekamp.
Adamson.	Holland.
Aikin.	Holloway.
Alexander.	Hoskins.
Alsup.	Huddleston.
Anderson.	Hughes.
Baker.	Hunt.
Barrett.	Hyder.
Barron.	Jackson.
Beck.	James.
Bedford.	Jefferson.
Bourne.	Johnson
Bradley.	of Anderson.
Burns.	Jones of Atascosa.
Butler.	Jones of Runnels.
Calvert.	Jones of Shelby.
Camp.	Kyle of Hays.
Canon.	Kyle of Palo Pinto.
Cathey.	Laird.
Caven.	Latham.
Celaya.	Lernens.
Chastain.	Leonard.
Clayton.	Lindsey.
Colson.	Long.
Coombes.	Lotief.
Cowley.	Mackay.
Crossley.	Magee.
Daniel.	Mathis.
Davidson.	McClain.
Dean.	McCullough.
Devall.	McGregor.
Dunlap.	McKee.
Dunagan.	Merritt.
Duvall.	Metcalf.
Dwyer.	Mitcham.
Engelhard.	Moffett.
Fain.	Moore.
Few.	Morrison.
Fisher.	Morse.
Ford.	Munson.
Fuchs.	Nicholson.
Glass.	Palmer.
Golson.	Parkhouse.
Good.	Patterson.
Goodman.	Pavlica.
Graves.	Pope.
Greathouse.	Puryear.
Griffith.	Ramsey.
Hankamer.	Ratliff.
Harman.	Ray.
Harris.	Reader.
Hartzog.	Reed of Bowie.
Head.	Reed of Dallas.
Hester.	Renfro.
Hicks.	Riddle.
Hill of Brazoria.	Roberts.
Hodges.	Rogers of Hunt.

Rogers	Sullivan.
of Ochiltree.	Tarwater.
Rollins.	Tennyson.
Ross.	Thomas.
Russell.	Tillery.
Savage.	Townsend.
Scarborough.	Turlington.
Scott.	Van Zandt.
Shannon.	Vaughan.
Shults.	Wagstaff.
Smith.	Walker.
Stanfield.	Weinert.
Steward.	Wells.
Stinson.	Winningham.
Stovall.	Wood.
Stubbeman.	Young.

## Absent—Excused

Harrison.	Kayton.
Hill of Webb.	McDougald.
Johnson	
of Dimmit.	

A quorum was announced present.

Prayer was offered by Rev. Geo. W. Coltrin, Chaplain.

## LEAVES OF ABSENCE GRANTED

The following Members were granted leaves of absence:

Mr. McDougald for today, on account of important business, on motion of Mr. Nicholson.

Mr. Hill of Webb for today, on account of the death of his father, on motion of Mr. Walker.

## HOUSE BILL ON FIRST READING

The following House bill, introduced today, was laid before the House, read first time, and referred to the appropriate committee, as follows:

By Mr. Vaughan, Mr. Camp, Mr. Roberts, and Mr. Reed of Bowie:

H. B. No. 10, A bill to be entitled "An Act amending Title 126, Revised Civil Statutes, 1925, and Title 19 of the Penal Code of Texas, by adding a new article to each of said titles, to be known as Article 7438-a, Revised Civil Statutes of 1925, and Article 1644-a, Penal Code of Texas, so as to provide for and authorize an additional defense in all suits, actions, or prosecutions under said titles; and providing that such defense shall not be available in any pending cause or in any cause of action, whether sued upon or not, for

any act, trade practice, or agreement committed, performed, or attempted to be performed prior to the adoption and approval of any code, trade practice, license, or agreement legally approved, performed, or issued under the terms of the National Industrial Recovery Act; and providing for the additional remedy of injunction by the State for violations of the provisions of such titles in addition to all other penalties now provided by law; and providing for the duration and termination of this Act, and declaring an emergency."

Referred to Committee on Judiciary.

#### EXPRESSING APPRECIATION TO MEMBERS OF THE HOUSE

The Speaker laid before the House, and had read, the following communications:

For every flower and for each tender word of sympathy, we are deeply grateful.

MRS. B. FRANK HAAG,  
ADDILESE and MERWIN.

September 19, 1933.

Hon. Coke Stevenson, Speaker of the House of Representatives, Austin, Texas.

Dear Coke: It has been said that "Friends are one's most valued possession," and truly Harold and I have come to realize the truth of that statement more each day. We are both deeply appreciative of the thoughtfulness of the House as expressed in their resolution of sympathy, and the lovely flowers sent to the hospital at Temple.

Please convey to the House our thanks. We hope to be with you and thank you personally before the session is over.

Very truly yours,

GEORGIA and HAROLD KAYTON.

#### TEXT OF ADDRESS BY JUDGE JOSEPH C. HUTCHESON, JR.

On motion of Mr. Burns, the following was ordered printed in the Journal:

##### Constitution Week

On this occasion American citizens should bow in reverence to the wisdom of our forefathers who created constitutional government.

On the eve of Constitution Week an esteemed son of Texas, Joseph C. Hutcheson, Jr., United States Circuit Judge, has addressed us as accounted by the Houston Post, September 17, 1933, as follows:

#### "Judge Hutcheson Interprets Constitution as Safety Valve in March of Progress

"One hundred and fifty years less four, ago, September 17, 1787, 39 of the 55 delegates, whose untiring patience, devotion, and good sense had framed it, signed the Constitution of the United States, and made its provisions known.

"Formed in four months of secret sessions, the result of compromises and of the adjustment of controversies between the 'die-hards' and the 'bitter-enders' which sometimes threatened to wreck the convention, the document had the wholehearted approval of not one of the 39 who signed it. Some downright and inflexible men, like Edmund Randolph and Elbridge Gerry, refused, not for hard feeling, but for sheer disappointment, to sign. It had yet to be adopted by conventions in the several States, and it was to be expected that the same grounds for division, dissatisfaction, and rancor, which had made progress in the convention difficult, would be present with greater vigor and less restraint there.

#### "Conditions of Government

"'A federal state,' said Dicey, 'requires for its formation two conditions. There must exist, in the first place, a body of countries, colonies, or provinces, so closely connected by locality, by history, by race or the like, as to be capable of bearing, in the eyes of the inhabitants, the impress of common nationality. A second condition absolutely essential to the forming of a federal system is the existence of a very peculiar state of sentiment among the inhabitants. They must desire a union, and must not desire unity.'

"The framers of the Constitution, wise in their day and generation, believed the American colonies to constitute such a body. Patriotic, devoted, willing themselves to give and take, they believed the people to be so. They staked their homes for adoption on this belief. They won, but only upon the understanding, insisted upon

by Virginia and some others, that amendments be added better defining the nature of the compact, and so imposing limitations that the respective rights of the States and the Nation, and of the people of both, should be clearly defined and guaranteed. Thus was formed, 'for an undefined and expanding future, and for a people gathered and to gather from many lands and of many tongues,' an 'indissoluble union of indestructible states.'

#### "Constitution Cited

" 'This Constitution,' said Article VI, page 2, 'and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every State shall be bound thereby.'

"And to this, in accord with the understanding, was added:

" 'Amend X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.'

"Brave words these, by which the powers of sovereignties desiring union without unity, independence, and interdependence, were to be known and kept in check. Brave words indeed, and words only they would have remained, without force or effect, had not the Constitution also made provision for a tribunal with authority to mark, and keep marked, the boundaries of their powers. For a federal system of government, if it is to be successful, must provide for a strong judiciary, able not only to firmly and finally settle by its decrees all controverted questions of sovereign power, but to command the respect and confidence of those whose powers it must define, and of the people they represent. The framers of the Constitution knew this. They were law-minded. They had been made so by the long and bitter struggle of the colonists with the crown to maintain the rights they knew they had. Years before these men met in convention to make permanent what the valor and the constancy of the colonists had gained. Burke, in moving words, had immortalized this American trait. Prophesying that America would never be subdued, would never lack for government, and declaring that her

people, natural lawyers, are trained to love law, they are natural lawyers, and other than a government of law or it is no government to them, he paid them this enduring tribute:

#### "Burke Pays Tribute

" 'Such men are acute, dexterous, prompt in attack, ready in defense, full of resources. In other countries the people more simple and of less mercurial caste judge of a nil principle in government only by an actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and sniff the approach of tyranny in every tainted breeze.'

"Later Dicey said it of their posterity:

" 'The main reason why the United States has carried out the federal system with unequalled success is because the people of the Union are more imbued with legal ideas than any other nation.'

"Article 3 of the Constitution speaks this lawmindedness: It provides in Section 1:

" 'The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish'; and in Section 2 for the extension of that power to and its exertion over . . . . 'all cases arising under the Constitution, laws, and treaties of the United States.' To this Article more than to the Fifth Article providing for amendments, and to the wisdom and insight of those to whom its administration has been confided, is due the Constitution flexibility and power of adaptation of the Constitution which has been its most solid and enduring guaranty of permanence and success.

#### "Changes Provided

"The Fifth Article, with its provisions for amendment, while of course the instrument of substantial constitutional changes, has operated more as a safety valve than as an instrument for change. Though there have been literally thousands of proposals for amendments, only 19 have been adopted, and these in groups and at long intervals. The first 12 in the

first 10 years of the country's life; the next three, the Thirteenth, Fourteenth, and Fifteenth, after 60 years, during the period of the Reconstruction; the last four, another 50 years later, in the decade of the 'New Freedom' from 1910 to 1920.

"It has been by construction, not amendment, that the Constitution has been expanded and adapted to meet our changing needs. A construction, which keeping ever in mind the illuminating words of Marshall. 'It is a Constitution we are expounding,' has interpreted its great generalities through which its spirit speaks, as permitting, nay requiring, its adaptation to our changing social life, and the correction of new abuses which adherence to old ways, in the midst of new complexities, inevitably brings about. A construction which, keeping the Constitution on the march, has prevented stagnation and crystalization by refusing to identify with the Constitution the particular notions of policy, the particular views of economics, the particular views of moral or social good prevalent at any particular time. A construction which has kept ever in mind and ever kept faith with the great, the fundamental purposes of the instrument, to promote not unity, but a more perfect union.

#### "Despair Rapped

"If these views are sound, are not some of us today unduly concerned over the fate of the Constitution? Are we not faced with the distressing conditions around us, and the new measures and methods proposed and brought forward to relieve them, underrating the toughness of the national fiber, the enduring permanence of the national ideals, and the glowing life and unchanging power of the spirit of the Constitution? I think we are.

"Many are now, I think, as many have done before, making the mistake of viewing the Constitution so narrowly in terms of their own preconceptions that the very intensity of their gaze occludes their vision of its dire prediction that the States would shortly be reduced to mere satrapies, the Federal Government engorged to a monstrous tyranny. In successive periods of strain and stress, the same cry has been raised. This cry has always proven unfounded. It always will prove so.

#### "Constitution Stands Alone

"It cannot be doubted that when the present stress is passed, and with calmer view some of the measures now being pressed are examined, especially if they have been passed through the fuller's fire of judicial action, the Constitution will still be found standing, strong in all its parts, forming a perfect union and cementing it, protecting against unitization and preventing it. Just as they were wrong who believed that the Civil War amendments in strengthening Federal power had overthrown the Constitution; just as those were wrong who believed that the passage of the trenching on the police powers of the States, destroyed the Union by creating unity; just as those are wrong who, mournfully watching the repealing of this amendment, cry 'Ichabod! Ichabod!'—so those are wrong who, either because they wish it or because they fear it, see death to the Constitution in the conditions which surround us. None of these were right; neither could be. The very structure and frame of the Constitution, the very instruments provided for its interpretation and its amendment, the very force of the fact that a document, prepared for a Union of thirteen States and 3,000,000 people, now serves a Union of 48 States and 120,000,000 people, prove this.

#### "Growth Is Testimony

"What a significant testimonial it is to its permanence that many of the States are individually more populous and greatly richer than the whole of them were in the beginning, and almost all of them greatly exceed in strength and resources every original State. Is there then no Achilles' heel, no vulnerable point, no cloud on the horizon? Indeed, there is.

"It resides in, it springs from, the nature of man, dressed in a little brief authority, and in the remoteness of administrators from the fields and the subjects of their administration. As governments grow more powerful, as they broaden and expand in territory and influence so that administration ceases to be personal and becomes bureaucratic, those who administer it tend to become more and more impatient of limitations and restraint; are coming more and more

to regard themselves not only as the executors, but as the sources of power, they first evade, then boldly defy the limitations which, successfully evaded, they have learned to despise. This, however, would not be serious in a constitutional government like ours, where the real power, at least, is in the Legislature, with its power over the purse and its undoubted right to make the laws under which we live, were it not for the change which has come over the Legislators in the spirit of their dreams regarding their constitutional duties and function.

#### "Clauses of Support

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

"In times past, lawmakers felt themselves constrained by this oath to make no law, to vote for none, which in their just opinion transcended the fundamental law. I do not suppose they deliberately do so now. It cannot be denied, though, that there is a tendency among the makers of our laws, as well as among the executors and administrators of them, to relegate too much of the responsibility for the Constitution to the courts, its titular, and at last, guardians; a tendency to regard it still as the Ark of the Covenant, but to be kept in the tabernacle tended by its priests, the judiciary, and to be brought out before the people only at the head of great processions on state occasions.

"I have a feeling, for which the wish is father, that this is a passing phase; that the voice of the constitutional lawyer will again be heard from in legislative halls, and that the presumption which rises in favor of the legislative constitutional intent will again be as sound factually as it legally is.

#### "Spirit Moves On

"Finally, I think our concern and our fears for the Constitution at times are due as much to the unreasonable claims which its friends make for it as to the number of its detractors. It is not, it was not in-

tended to be, even in its letter, a rigid or unchangeable document, binding us to a dead past. Certainly its spirit is not dead. To the very contrary, the spirit of the Constitution is always on the march, keeping step with the progress and achievement of its constituent States, ever holding aloft the standard of their indissoluble Union, whose greatness lies more in the greatness of its parts than in the greatness of the whole. A greatness springing from the fact that there is being ever woven a pattern of National similarity through the interaction of State dissimilarities, of National homogeneity through the give and take of State heterogenities.

"Whatever experiments then are proposed or conducted in the State or Nation need not trouble us so long as they impair neither the essential insularity of the States nor their essential union. When, and only when, measures are proposed or pressed which, tending to unity, rather than to union, to weaken rather than to strengthen the States, and therefore seem designed to obtain unity at the sacrifice of union, need we, as the colonists did, judging misgovernment not by the pressure of an actual grievance, but by the badness of a principle, stand ready in defense.

J. C. HUTCHESON, Chairman."

#### ADDRESS BY DR. AUBREY L. WILLIAMS

In accordance with the provisions of a concurrent resolution heretofore adopted, providing for a Joint Session of the House and Senate, to hear an address by Dr. Aubrey L. Williams, the Honorable Senate, at 10:15 o'clock a. m., appeared at the Bar of the House, and, being admitted, were escorted to seats prepared for them.

Hon. Edgar E. Witt, Lieutenant Governor, and Senator George Purl, President Pro Tempore of the Senate, occupied seats on the Speaker's stand.

Speaker Stevenson called the House of Representatives to order, and stated that the two Houses were in Joint Session for the purpose of hearing an address by Dr. Aubrey L. Williams, Regional Field Representative of the Federal Emergency Relief Administration.

Lieutenant Governor Edgar Witt called the Senate to order.

Speaker Stevenson presented Senator George Purl, President Pro Tempore of the Senate, who, in turn, introduced Dr. Aubrey L. Williams.

Dr. Williams then addressed the Joint Session.

#### SENATE RETIRES

At 11:35 o'clock a. m., upon the conclusion of the address by Dr. Williams, the Senate retired to its Chamber.

#### ADJOURNMENT

On motion of Mr. Renfro, the House, at 11:40 o'clock a. m., adjourned until 10 o'clock a. m., tomorrow.

#### APPENDIX

#### STANDING COMMITTEE REPORT

The Committee on Labor filed a favorable report on House Joint Resolution No. 1.

## In Memory of Judge L. D. Hill

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Mr. Walker offered the following resolution:

Whereas, On the Nineteenth day of September, 1933, Judge L. D. Hill, of Nashville, Tennessee, father of our distinguished fellow Member, Paul S. Hill, was called by the Supreme Architect of the Universe from the walks of man; and

Whereas, Judge Hill was a distinguished southern gentleman, having reached the age of seventy-seven (77) years in the service of his State and the Democratic Party, having served during the administration of Woodrow Wilson as International Boundary Commissioner between Texas and Mexico, and having served the State of Tennessee as Railroad Commissioner, Judge of the Chancery Court, Lieutenant Governor, Chairman of the State Democratic Executive Committee, and at the time of his death was serving on the Public Utilities and Railroad Commission of that splendid State; and

Whereas, Judge Hill was always identified with the best interests of his State and the Nation, and was a leader in all matters pertaining to the public welfare, and

Whereas, In the passing of this distinguished southern gentleman, the State of Tennessee and the Nation have suffered an irreparable loss, and

Whereas, The House of Representatives is appreciative of his splendid life and character, and wish to convey to his family and to the distinguished Member of the Legislature their deep sympathy in this great loss, now therefore, be it

Resolved by the House of Representatives, That this Body extend to the family of the deceased their heartfelt sympathy in the loss of Judge Hill, and be it further

Resolved, That a copy of this resolution, under the seal of the Chief Clerk of the House, be mailed to the members of his family, and that a copy of this resolution be spread upon the House Journal, and that when the House adjourns today, that it do so out of respect and memory of this illustrious, patriotic, southern gentleman.

WALKER,  
BOURNE,  
FORD,  
MITCHAM,  
RATLIFF.

The resolution was read second time.

On motion of Mr. Clayton, the names of all the Members of the House were added to the resolution as signers thereof:

Signed—Stevenson, Speaker; Adamson, Aikin, Alexander, Alsup, Anderson, Baker, Barrett, Barron, Beck, Bedford, Bradley, Burns, Butler, Calvert, Camp, Canon, Cathey, Caven, Celaya, Chastain, Clayton, Colson, Coombes, Cowley, Crossley, Daniel, Davidson, Dean, Devall, Dunagan, Dunlap, Duvall, Dwyer, Engelhard, Fain, Few, Fisher, Fuchs, Glass, Golson, Good, Goodman, Graves, Greathouse, Griffith, Hankamer, Harman, Harris, Harrison, Hartzog, Head, Hester, Hicks, Hill of Brazoria, Hodges, Holekamp, Holland, Holloway, Hoskins, Huddleston, Hughes, Hunt, Hyder, Jackson, James, Jefferson, Johnson of Anderson, Johnson of Dimmit, Jones of Atascosa, Jones of Runnels, Jones of Shelby, Kayton, Kyle of Hays, Kyle of Palo Pinto, Laird, Latham, Lemens, Leonard, Lindsey, Long, Lotief, Magee, Mackay, Mathis, McClain, McCullough, McDougald, McGregor, McKee, Merritt, Metcalfe, Moffett, Moore, Morrison, Morse, Munson, Nicholson, Palmer, Parkhouse, Patterson, Pavlica, Pope, Puryear, Ramsey, Ray, Reader, Reed of Bowie, Reed of Dallas, Renfro, Riddle, Roberts, Rogers of Hunt, Rogers of Ochiltree, Rollins, Ross, Russell, Savage, Scarborough, Scott, Shannon, Shults, Smith, Stanfield, Steward, Stinson, Stovall, Stubbs, Sullivan, Tarwater, Tennyson, Thomas, Tillery, Townsend, Turlington, Van Zandt, Vaughan, Wagstaff, Weinert, Wells, Winningham, Wood, Young.

The resolution was adopted unanimously by a rising vote.